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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,267	07/31/2003	Kenneth H. Kohlndorfer	816 DIV2	3787

7590

07/28/2004

Markell Seitzman  
Breed Technologies, Inc.  
7000 Nineteen Mile Road  
Sterling Heights, MI 48314

EXAMINER
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NGUYEN, JOHN QUOC

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/631,267

Applicant(s)

KOHLNDORFER ET AL.

Examiner

John Q. Nguyen

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 6/18/04 and interview of 7/20/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-33 is/are pending in the application.
- 4a) Of the above claim(s) 27,28,31 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29,30 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/11/03 and 4/23/0</u>  | 6) <input type="checkbox"/> Other: _____                                    |

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Applicant's election without traverse of claims 29-33 in the reply filed on 6/18/04 is acknowledged. Additionally, during a telephone conversation with Mr. Seitzman on 7/20/04, a provisional election was made with oral traverse to prosecute the invention of Fig. 13, claims 29, 30, and 33. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27, 28, 31, 32 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claims 29, 30, 33 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For clarity and/or definiteness, it appears that —a— should be inserted after “with” (claim 29, line 2), that “a seat” (claim 33, line 2) should be —said seat—, that a comma should be inserted after “load” (claim 33, line 6).

In claim 29, is the spool and seat belt being claimed? If so, they should be positively recited.

All claims should be revised carefully to correct all other deficiencies similar to the ones noted above. The non-elected claims should also be similarly corrected at the same time so that the application can be allowed without delay should the generic claims become allowable.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebner et al (US 5788176).

Ebner et al discloses an apparatus having substantially all the claimed features including a torsion bar 30. Elements such as 32 and 70 are made from plastic/resin. It is old and well known to use plastic/resin material instead of metal when the plastic/resin meets strength requirements to reduce weight and manufacturing costs, and eliminate corrosion. In view of the elements already made from plastic, it would have been obvious to a person having ordinary skill in the art to further make the frame from plastic/resin if a plastic/resin can meet the strength requirements ("first level pull") to obtain the above advantages.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebner et al (US 5788176) in view of GB 2020963.

The GB reference discloses another similar apparatus having upper and lower mounting members received in cavities. That the positions of the mounting members and cavities are switched would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference, design criteria, space optimization, and costs. It would have been obvious to a person having ordinary skill in the art to alternatively provide the apparatus of Ebner et al with mounting members and cavities as taught by the GB apparatus to facilitate mounting the apparatus.

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29 and 30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6419178. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that claims 29 and 30 are encompassed in claims 1-16 of the above patent.

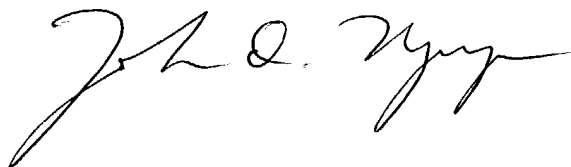
Claim 29, 30, 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6722601 in view of Ebner et al (US 5788176). Claims 1-9 of the above patent disclose substantially all the claimed features. Ebner et al is cited to show the old and well known torsion bar. It would have been obvious to a person having ordinary skill in the art to provide the apparatus of the above claims 1-9 with a torsion bar as taught by Ebner et al to absorb energy as is old and well known in the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Q. Nguyen whose telephone number is (703) 308-2689. The examiner can normally be reached on Monday-Friday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki, can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

A handwritten signature in black ink, appearing to read "John Q. Nguyen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John Q. Nguyen  
Primary Examiner  
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